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In the Supreme Court of the United States

OCTOBER TERM, 1994

FREIGHTLINER CORPORATION, PETITIONER

v.

BEN MYRICK, ET AL.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP., PETITIONER

v.

JACK LINDSEY, EXECUTOR OF THE ESTATE AND SURVIVING SPOUSE OF GRACE C. LINDSEY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether respondents' state common law tort actions are preempted by the National Traffic and Motor Vehicle Safety Act of 1966, 49 U.S.C. 30101-30169 (formerly 15 U.S.C. 1381-1431 (1988 & Supp. V 1993)), or by Federal Motor Vehicle Safety Standard 121, 49 C.F.R. 571.121.

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INTEREST OF THE UNITED STATES

Under the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381-1431 (1988 & Supp. V 1993), the Secretary of Transportation is required to promulgate appropriate federal motor vehicle safety standards. 15 U.S.C. 1392(a).[1]

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[1] The National Traffic and Motor Vehicle Safety Act was recodified, along with other Acts governing transportation, on July 5, 1994, "without substantive change." Pub. L. No. 103-272, § 1(a), 108 Stat. 745; see *id.* § 1(e), 108 Stat. 941-973 (codifying new 49 U.S.C. 30101-30169). For convenience,

This case concerns the preemptive effect of one of those standards, governing air brake systems. The Court's decision may have a substantial effect on the manner in which the Secretary exercises his regulatory authority under the Act.

STATEMENT

1. Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act or Act) to "reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." 15 U.S.C. 1381. To effectuate those purposes, the Safety Act requires the Secretary of Transportation to issue appropriate safety standards for motor vehicles and motor vehicle equipment. 15 U.S.C. 1392(a). The Act defines the term "motor vehicle safety standard" to mean "a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria." 15 U.S.C. 1391(2); accord 15 U.S.C. 1392(a). The Act prohibits the manufacture for sale or introduction into interstate commerce of any motor vehicle that does not meet the standards. 15 U.S.C. 1397(a)(1)(A). The Secretary has delegated the authority to issue standards to the Administrator of the National Highway Traffic Safety Administration (NHTSA). 49 C.F.R. 1.50(a).

The safety standard at issue in this case is Standard 121, which regulates braking systems on vehicles equipped with air brakes, generally heavy vehicles such as buses, trucks, and trailers. 49 C.F.R. 571.121; see *id.* S1. "NHTSA has been concerned about the safety of [such heavy vehicles] * * * equipped with air-brakes since the agency's inception." 58 Fed. Reg. 11,009 (1993). NHTSA estimates that crashes involving the loss of control of such heavy vehicles during

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we will refer to the earlier version of the Act, which appears in the opinions below and petitioners' brief.

braking result in approximately 2500 deaths and 50,000 injuries annually. *Id.* at 50,754.

The two most important indicators of brake performance are "the distance in which a brake system can stop a vehicle from a given speed, * * * [and] the stability of the vehicle while stopping." 35 Fed. Reg. 10,368 (1970). To address those aspects of performance, Standard 121, as initially promulgated by NHTSA, required that vehicles equipped with air brakes be able to stop within certain distances at various speeds, without straying from a 12-feet-wide lane, and without any wheel locking up more than momentarily. See 36 Fed. Reg. 3817 (1971); 49 C.F.R. 571.121 S5.3.1 (1972). Standard 121 also addressed other aspects of brake performance, such as brake actuation and release times, *i.e.*, the speed with which a braking system responds to pressure applied to and removed from the brake pedal. See 49 C.F.R. 571.121 S5.3.3, S5.3.4 (1972); 35 Fed. Reg. 10,369, 10,370 (1970); 37 Fed. Reg. 3905, 3907 (1972).

Although Standard 121 did not expressly require the use of antilock braking systems (ABS), the short stopping distances in the Standard effectively required the use of ABS devices to assure adequate vehicle stability and to prevent wheels from locking up during braking, at least on some vehicles covered by the Standard.[2] See 36 Fed. Reg. 3817 (1971); 39 Fed. Reg. 7966 (1974). After NHTSA issued Standard 121, some manufacturers expressed the view that ABS devices then on the market were unreliable, and that, in the event of a sudden

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[2] An ABS device "helps prevent loss of control situations by automatically controlling the amount of braking pressure applied to a wheel. With these systems, the electronic control unit (ECU) monitors wheel-speeds, and changes in wheel-speeds, based on electric signals transmitted from sensors located at the wheels or within the axle housings. If the wheels start to lock, the ECU signals a modulator control valve to actuate, thereby reducing the amount of braking pressure applied to the wheel that is being monitored." 57 Fed. Reg. 24,213 (1992).

failure of an ABS device, drivers would be unable to modulate the powerful new brakes required by Standard 121, which could lead to a serious loss of control. 39 Fed. Reg. 7966, 7967 (1974); see *id.* at 39,880. NHTSA concluded, however, after reviewing the capabilities of the major ABS device manufacturers, that the available ABS devices were reliable and would not decrease highway safety. *Ibid.*[3]

Several vehicle manufacturers and associations petitioned for judicial review of Standard 121. The Ninth Circuit remanded the matter to NHTSA for further proceedings, *Paccar, Inc.* v. *NHTSA*, 573 F.2d 632, 646, cert. denied, 439 U.S. 862 (1978), concluding that Standard 121 was not based on the "quality of 'reliable information and research' that the Act require[s] as a prerequisite" to issuance of a safety standard, 573 F.2d at 641. The court did not take issue with NHTSA's premise that greater braking capacity, as achieved by shorter stopping distances, would improve highway safety. *Id.* at 640. But as the court of appeals read the administrative record, mass production of ABS devices had revealed evidence of serious problems with the reliability of those devices, which should have led NHTSA to investigate "more fully the safety of vehicles in use." *Id.* at 642 (emphasis omitted). Since, according to the court of appeals, "antilock problems have appeared with usage rather than at the manufacturing stage,

[3] During the course of the rulemaking and in response to various petitions for reconsideration, NHTSA eliminated one stopping distance requirement from Standard 121 (36 Fed. Reg. 3817 (1971)), lengthened another stopping distance several times (*ibid.*; 39 Fed. Reg. 17,554 (1974); 41 Fed. Reg. 8786 (1976)), and modified the lockup regulations to permit "controlled" lockup of wheels allowed by an ABS device (37 Fed. Reg. 3905, 3908 (1972)). NHTSA also suspended the stopping distance and lockup regulations for buses because of erratic performance of ABS devices used in buses. 41 Fed. Reg. 1598 (1976). It eventually restored those regulations for intercity and transit buses, but not school buses. 43 Fed. Reg. 12,015 (1978). The regulations were later suspended again for all buses. 52 Fed. Reg. 20,602 (1987).

the * * * methods employed by NHTSA to examine the validity of complaints were inadequate." *Id.* at 643.

The court noted that, in vehicles manufactured with more powerful braking systems to meet the stopping distance requirements of Standard 121, the failure of ABS devices could result in a situation "more hazardous than the performance of pre-Standard vehicles." 573 F.2d at 643. Concluding that the record could not sustain NHTSA's decision to impose those stopping distance requirements without further investigation of the problems with ABS devices (which were effectively mandated to meet those requirements), the court held that, "until such time as NHTSA develops evidence that the new braking systems required by the Standard do not create the possibility of greater danger to the public, those parts of the Standard requiring * * * the antilock device should be suspended." *Ibid.*

NHTSA unsuccessfully petitioned for a writ of certiorari, arguing that the court had substituted its judgment for that of the agency on a Standard that was "an especially important part of NHTSA's attempt to reduce highway fatalities, [the] invalidation [of which] could lead to deaths and injuries that should be prevented." Pet. 14, *NHTSA* v. *Paccar, Inc.*, No. 78-95. After certiorari was denied (439 U.S. 862 (1978)), NHTSA amended Standard 121 in 1979 to state that the stopping distance and lockup requirements were "not applicable to trucks and trailers." 49 C.F.R. 571.121 S3; see 44 Fed. Reg. 46,849 (1979). NHTSA stated that it amended Standard 121 in that way, rather than repeal the sections affected by the court of appeals' decision, so that "the affected sections can most easily be reinstated when suitable solutions to the requirements laid down by the [court of appeals] are found." *Ibid.* NHTSA also left those provisions in place to make manufacturers "aware of what the agency still considers to be reasonable standards for minimum acceptable performance,

and those manufacturers that wish to construct their vehicles in accordance with the non-mandatory sections of the standard will have the necessary guidance to do so." *Ibid.*[4] Other aspects of braking performance governed by Standard 121, such as the brake actuation and release time rules, were unaffected by the *Paccar* decision and remain in effect for trucks and trailers. See *ibid.* (specifying suspended sections of Standard 121).

NHTSA has recently proposed new stopping distance and stability requirements for heavy vehicles using air brakes, and it has also proposed a requirement that those vehicles be equipped with ABS devices. See 58 Fed. Reg. 11,009 (1993); *id.* at 50,738. As yet, however, NHTSA has not taken final action on those proposals. Since Standard 121 was amended in 1979, therefore, there has been no federal motor vehicle safety standard in effect that imposes stopping distance or vehicle stability requirements on trucks and trailers or requires the use of ABS devices in those vehicles.

2. The issue in this case is whether either the Safety Act or Standard 121 (as amended in 1979 to exclude trucks and trailers from its stopping distance and stability requirements) preempts two state common law tort actions against heavy truck manufacturers. The Safety Act contains the following preemption provision:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment[,] any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

15 U.S.C. 1392(d). The Act also contains a saving clause, which provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. 1397(k).

3. Respondent Myrick was injured in an accident with a tractor-trailer combination vehicle, the truck-tractor of which was manufactured by petitioner Freightliner. Respondent Lindsey is the surviving spouse of Grace Lindsey, who was killed in a collision with a vehicle, the truck-tractor of which was manufactured by petitioner Navistar. Respondents filed independent state-court suits, which were removed to federal district court based on diversity jurisdiction. In both cases, respondents alleged that the vehicles' braking systems were defectively designed because the vehicles did not have an ABS device. Petitioners moved for summary judgment, contending that, because Standard 121, as amended in 1979, did not require their trucks to be equipped with ABS devices, respondents' actions are preempted. Pet. App. 2a-4a. In both cases, the district courts granted summary judgment for petitioners, holding that respondents' state common law design defect claims are impliedly preempted. *Id.* at 34a-42a, 46a-47a.

4. A divided court of appeals reversed. Pet. App. 1a-33a. Relying on prior circuit precedent, the court held that respondents' claims are not expressly preempted by the Safety Act. *Id.* at 10a-11a. The court reasoned that the saving clause in Section 1397(k) "plainly state[s]" that compliance with a safety standard does not exempt anyone from common law liability, and that the text of the preemption provision in Section 1392(d) does not in any event encompass state common law. *Id.* at 7a-8a.

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[4] NHTSA advised the public that "[u]sers are not required to disconnect antilock systems on vehicles in use, and may order antilock according to their choice on new vehicles," noting that it had uncovered no evidence that ABS components "installed contai[n] inherent problems that create a hazard to the public." 44 Fed. Reg. 9784 (1979).

The court also rejected petitioners' implied preemption argument. Pet. App. 9a-25a. Relying on this Court's decision in *Cipollone* v. *Liggett Group, Inc.*, 112 S. Ct. 2608 (1992), the court concluded that, where a federal statute contains an express preemption clause, and where that clause constitutes a "reliable indicium of congressional intent with respect to state authority," a court should not consider theories of implied preemption. Pet. App. 9a-10a, 14a. The court expressed the view that "the reliable indicium requirement is not much of a hurdle," and that a presumption "that a preemption clause is a reliable indicium of congressional intent * * * is in keeping with the general rule of assuming that Congress intended what it said." *Id.* at 18a-19a. Relying on such a presumption, as well as the legislative history, the Court concluded that the preemption provisions of the Safety Act (including the clause preserving common law liability) are reliable indicia of congressional intent, and therefore foreclose an implied preemption claim.

Judge Hill dissented on the implied preemption issue. Pet. App. 25a-33a. He believed that "nothing in * * * *Cipollone* mandates that implied pre-emption is no longer viable in the face of an express pre-emption clause" (Pet. App. 28a), and that, because "this case involves only state law claims that impose legal duties predicated on subject matter squarely governed by federal regulations," analysis of implied preemption is permissible (*id.* at 30a). Judge Hill then concluded that respondents' claims are preempted because "[t]he assertion of state law claims which would forbid the manufacture of brakes expressly permitted by federal law is a

classic conflict where, under the Supremacy Clause, federal law must prevail." *Id.* at 32a.[5]

SUMMARY OF ARGUMENT

A. Respondents' claims are not expressly preempted by the Safety Act. The preemption provision, Section 1392(d), precludes the operation of non-identical state safety standards only when there is a federal safety standard "in effect" on the "same aspect of performance" that is the subject of a state safety standard. Since NHTSA amended Standard 121 in August 1979, there has been no federal standard "in effect" governing the subject of respondents' claims. Moreover, the text and structure of the Safety Act, taking the preemption provision, Section 1392(d), and the saving clause, Section 1397(k), in combination, demonstrate that the Safety Act does not expressly preempt judicial orders or duties of care imposed by the common law, but rather preserves manufacturers' tort liability under state law.

B. The court of appeals erred in concluding that, because the Safety Act contains an express preemption clause, petitioners' implied preemption argument is foreclosed. The existence of the express preemption clause should not bar inquiry into whether the asserted state common law duty of care underlying respondents' claims would actually conflict with federal law. On the merits of that implied preemption issue, however, the asserted common law duty does not conflict with either Standard 121 or the Safety Act. Neither the Ninth Circuit, in its *Paccar* decision, nor NHTSA, in amending Standard 121 following that decision, made the determination that truck manufacturers must have the unfettered option, as a matter of federal law, not to install

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[5] The apparent factual premise of Judge Hill's opinion—that air brakes and ABS devices are mutually exclusive, see Pet. App. 25a-27a—is incorrect. ABS devices enhance air brake systems; they do not replace them. See, *e.g.*, 36 Fed. Reg. 3817 (1971); 57 Fed. Reg. 24,212 (1992).

ABS devices on their vehicles. Petitioners can comply with both Standard 121 and a state common law duty obligating them to install ABS devices, and, because NHTSA has not concluded that ABS devices disserve safety, such a common law duty would not interfere with the objectives of any federal motor vehicle safety standard. Nothing in the Safety Act itself prevents the installation of ABS devices, and, because Congress provided room for the operation of state tort law in the Safety Act, the state common law duty alleged by respondents would not conflict with Congress's chosen methods in the Act of promoting safety.

ARGUMENT

RESPONDENTS' CLAIMS ARE NOT PREEMPTED BY EITHER THE SAFETY ACT OR STANDARD 121

A. Respondents' Claims Are Not Expressly Preempted By The Safety Act

Petitioners contend that respondents' claims are expressly preempted by 15 U.S.C. 1392(d), the Safety Act's preemption provision, and that those claims are not saved by 15 U.S.C. 1397(k), which expressly preserves common law liability of manufacturers, notwithstanding compliance with federal safety standards. Petitioners' express preemption argument has two essential components. First, they argue that the Safety Act preempts state law concerning ABS devices because there currently is a federal standard in effect with respect to such devices. See Pet. Br. 31-32. Second, they argue that duties of care imposed by common law tort liability fall within the preemptive reach of the Safety Act. Pet. Br. 32-33. Both contentions are incorrect.

1. Section 1392(d) provides:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment[,] any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

A prerequisite to petitioners' preemption argument under this provision is that a federal standard is "in effect" with respect to ABS devices for trucks and trailers.

While numerous provisions of Standard 121 are in force, since August 9, 1979, there has been no federal safety standard established under the Safety Act "in effect" with regard to stopping distances or vehicle stability (the relevant "aspect[s] of performance") for trucks and trailers, including the trucks involved in these cases.[6] Moreover, no NHTSA standard in effect requires the installation of ABS devices (the relevant "item of equipment") in trucks and trailers. The States are therefore free, under Section 1392(d), to establish or to continue in effect their own safety standards applicable to those "aspect[s] of performance" and that "item of equipment."

Petitioners contend, however (Pet. Br. 31-32), that Congress intended the preemptive reach of federal safety standards to be broad, and that an "aspect of performance" is defined by both the affirmative obligations imposed by a standard and the exclusions from those obligations. The scope of the Safety Act's preemption provision is significantly narrower than petitioners suggest. The Act defines a "motor vehicle safety standard" to mean "a minimum standard for

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[6] The *Paccar* decision did not invalidate Standard 121 with regard to buses. 573 F.2d at 634 n.1; see 44 Fed. Reg. 46,849 (1979). However, NHTSA suspended the stopping distance requirements of Standard 121 for buses in 1987 (52 Fed. Reg. 20,602), and since then, those aspects of the Standard have not been applicable to any vehicles. See 58 Fed. Reg. 11,010 (1993). Parts of Standard 121 relevant to other "aspects of performance," such as brake actuation and release time, do remain "in effect." See page 3, *supra*.

motor vehicle performance, or motor vehicle equipment performance," that, *inter alia*, "provides objective criteria." 15 U.S.C. 1391(2); see also 15 U.S.C. 1392(a). Nothing in Standard 121 establishes a "minimum standard," stated in "objective criteria," for ABS devices, or for stopping distances and vehicle stability, in trucks and trailers. To the contrary, the relevant provisions of Standard 121 are expressly inapplicable to trucks and trailers. Thus, petitioners' contention that the relevant aspects of Standard 121 are "in effect" for trucks and trailers even though (indeed because) those vehicles are expressly exempted from its coverage is contrary, not only to common usage, but also to the text of the Act.

The express preemption question in this case is the same as if NHTSA had never commenced rulemaking proceedings concerning stopping distances or vehicle stability at all, or had done so only with respect to buses. It could not seriously be contended that a federal safety standard applicable only to braking systems in buses preempted state standards applicable to braking systems in trucks and trailers. That is so because, when a federal standard is in effect under the Act, a State is barred only from establishing "any safety standard applicable to the *same* aspect of performance of *such vehicle or item of equipment*." 15 U.S.C. 1392(d) (emphasis added). The fact that NHTSA did go through rulemaking that included braking systems in trucks and trailers but ultimately excluded them from coverage of the relevant provisions of Standard 121 does not alter the legal analysis.[7]

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[7] Because Section 1392(d) applies only when a State seeks to enforce a standard "applicable to the same aspect of performance" for which a federal standard is in effect, it does not apply here simply because state law might be said to relate to, or touch upon, vehicles or equipment that are mentioned in but left unregulated by the federal standard. Cf. *CSX Transp., Inc.* v. *Easterwood*, 113 S. Ct. 1732, 1738 (1993) (preemption provision ousting state regulations where Secretary of Transportation has adopted a regulation or order "covering" the subject matter of the state requirement construed narrowly to apply only when "the federal regulations substantially subsume the subject matter of the relevant state law"); compare *Morales* v. *Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2037 (1992) (preemption clause's use of "relating to" has broad preemptive effect).

2. a. Petitioners' express preemption argument would be without merit even if the relevant requirements of Standard 121 were applicable to trucks and trailers, because the preemption provisions of the Safety Act do not in any event immunize manufacturers who comply with NHTSA standards from liability at common law. Petitioners argue that, in preempting any state "safety standard," Congress intended to preempt liability arising from state tort law. We acknowledge that the term "standard," standing alone, may be ambiguous on that point. The common law of torts is sometimes described in general terms as articulating a "standard of care" to be applied on a case-by-case basis to assess a defendant's conduct and fault. See S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966); cf. *CSX Transp., Inc.* v. *Easterwood*, 113 S. Ct. 1732, 1737-1738 (1993) (legal duties imposed by common law fall within scope of "law, rule, regulation, order, or standard relating to railroad safety"); *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 246-247 (1959). But the term "standard" may also connote a more definite and independently ascertainable criterion, prescribed in advance by responsible authorities.[8] That connotation would not ordinarily be thought to include duties of care that derive from the process of common law adjudication.

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[8] See *Webster's Third New International Dictionary* 2223 (1986) (def. 3a: "something that is established by authority, custom, or general consent as a model or example to be followed"; def. 7b: "carefully drawn specifications covering manufacturing material or equipment"); *The Random House Dictionary of the English Language* 1857 (2d ed. 1987) (def. 1: "something considered by an authority or by general consent as a basis of comparison; an approved model").

Moreover, unlike the statute at issue in *CSX*, which preempted any relevant "law, rule, regulation, order, or standard" (113 S. Ct. at 1737), thus reaching virtually every method by which a State can impose legal obligations, or the statute at issue in *Cipollone*, which used the sweeping term "requirement" (112 S. Ct. at 2620), the Safety Act preempts only "safety standard[s]" (15 U.S.C. 1392(d)), not all "orders" or "requirements." The statute's reference to a State's "establish[ing]" or "continu[ing] in effect" any "safety standard" (*ibid.*) also suggests a prescriptive rule affirmatively promulgated by a legislative or administrative body. That is especially so since Section 1392(d) uses directly parallel terminology in describing the standards prescribed by NHTSA: The predicate for preemption is that "a Federal motor vehicle safety standard established under [the Safety Act] is in effect," and even then nothing bars "any State from enforcing any safety standard which is identical to a Federal safety standard." See also 15 U.S.C. 1391(2) (defining "motor vehicle safety standard" as a "minimum standard" of "performance").

b. Any ambiguity on the preemption issue that may be present in Section 1392(d) standing alone is resolved by reference to Section 1397(k), which provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." Under the plain meaning of that provision, even if a federal motor vehicle safety standard were in effect with respect to ABS devices on trucks and trailers and petitioners had complied with that standard, their compliance would not immunize them from common law liability. The legislative history of Section 1397(k), which originated in the House of Representatives, confirms that Congress intended that manufacturers could be held liable in tort, even if their vehicles complied with all relevant federal safety standards. See H.R. Rep. No. 1776, 89th Cong., 2d Sess.

24 (1966) ("compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law, particularly those relating to warranty, contract, and tort liability"); 112 Cong. Rec. 21,487 (1966) (Sen. Magnuson) (stating that Senate accepted House provision, and observing that "it makes explicit, in the bill, a principle developed in the Senate report").[9] There is no indication that Congress intended Section 1397(k) to have a limited scope in preserving common law liability—by, for example, restricting its reach to aspects of performance that were *not* covered by federal standards. See Pet. Br. 29 (noting that petitioners did not raise that argument below). The statutory language, preserving "any liability" under common law, precludes that

[9] The version of the Safety Act originally passed by the Senate included a preemption clause similar to the one eventually enacted, but did not include a provision expressly preserving common law liability. See 112 Cong. Rec. 14,214-14,219 (1966). The Senate report nevertheless stated that "the Federal minimum safety standards need not be interpreted as restricting State common law standards of care. Compliance with such standards would thus not necessarily shield any person from product liability at common law." S. Rep. No. 1301, *supra*, at 12. Senator Magnuson, the floor manager, similarly stated that "[c]ompliance with Federal standards would not necessarily shield any person from broad liability at the common law. The common law on product liability still remains as it was." 112 Cong. Rec. 14,230 (1966). The statements that compliance with federal standards would not "necessarily" shield any person from liability may well have been based on the view that a court or jury in a tort suit would be free to take the defendant's compliance with the federal minimum standard into account in determining whether the defendant acted reasonably or otherwise satisfied the applicable duty of care under the common law. This conclusion is reinforced by the statements during consideration of the conference report in the Senate that Section 1397(k) "does not prevent any person from introducing in a lawsuit evidence of compliance or noncompliance with Federal standards," 112 Cong. Rec. 21,487 (1966) (Sen. Magnuson), and that "proof of compliance with Federal standards may be offered in any proceeding for such relevance and weight as courts and juries may give it," *id.* at 21,490 (Sen. Cotton).

reading of Section 1397(k). See also *Taylor* v. *General Motors Corp.*, 875 F.2d 816, 824-825 (11th Cir. 1989), cert. denied, 494 U.S. 1065 (1990), discussed at Pet. App. 7a-8a.

Thus, under a straightforward reading of Section 1392(d) and Section 1397(k), taken together, States are preempted from adopting prescriptive safety standards by legislative or administrative action if NHTSA has established a safety standard governing the same aspect of performance. See also 108 Stat. 943 (codifying new preemption provision, 49 U.S.C. 30103 (b), which states that, when a federal standard is in effect, a State may "prescribe or continue in effect" a standard only if identical to the federal standard "prescribed" under the Safety Act). State courts, however, are not precluded by those provisions from entering tort judgments in cases raising the claim that a vehicle or item of equipment was defectively designed with respect to that same aspect of performance.[10]

Petitioners argue (Pet. Br. 35-36), however, that a general statutory saving clause must not be read to unravel the legislative purpose embodied in the rest of a federal statute, including its preemption provision. That proposition is not relevant to this case, for two reasons. First, Section 1397(k) is not a general saving clause, but is focused precisely on only

[10] NHTSA has long taken that view. In a January 5, 1981, letter from Frank Berndt, Chief Counsel of NHTSA, to counsel for one of the parties in *Dawson* v. *Chrysler Corp.*, 630 F.2d 950 (3d Cir. 1980), cert. denied, 450 U.S. 959 (1981), NHTSA stated that, under Section 1397(k), compliance with a federal standard does not provide a defense under federal law to a products liability action. On December 26, 1990, NHTSA reiterated its position, in a letter from its Chief Counsel, Paul Jackson Rice, to counsel for one of the parties in *Neilson* v. *Porsche*, No. 87-1121 (D. Idaho), that, "as a general matter, the fact that a motor vehicle complies with applicable federal safety standards neither preempts state law tort actions nor provides a complete defense to such claims." See also U.S. Amicus Br. 15, *Wood* v. *General Motors Corp.*, No. 89-46. We are providing counsel for the parties with copies of those letters and our brief in *Wood*. We also are lodging copies of the letters with the Clerk of this Court.

one object of possible preemption under the Safety Act, common law liability. This is not a case, therefore, where it is argued that "[a] general 'remedies' saving clause * * * supersede[s] the specific substantive pre-emption provision." *Morales* v. *Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2037 (1992). Here, the narrower provision is the saving clause, Section 1397(k), which specifically addresses the interaction of compliance with federal safety standards and liability at common law; that clause controls the more general preemption provision, Section 1392(d)—even if we assume, *arguendo*, that Section 1392(d) otherwise would, in itself, preempt a state common law cause of action (see pages 13-14, *supra*).

Second, there is no danger that our reading of Section 1397(k) will "undermine this carefully drawn statute." *Morales*, 112 S. Ct. at 2037. Congress enacted the two sections at the same time and obviously perceived that they could operate harmoniously. Cf. *ibid.* (specific preemption clause at issue in *Morales* was enacted years after general saving provision). Congress enacted Section 1392(d) to assure manufacturers that they would not have to conform their fleets to different and possibly conflicting standards mandated by States and local jurisdictions. At the same time, it is clear that Congress did not elevate uniformity to an absolute value in the Act. For example, Congress provided that mandatory federal safety standards are only "minimum standard[s]," 15 U.S.C. 1391(2), and it interposed no barrier to manufacturers' exceeding those standards voluntarily, either nationwide or in particular States.

Admittedly, Section 1397(k), by preserving tort claims against manufacturers who meet federal safety standards, creates some tension within the Safety Act, since the Act also prevents States from directly prescribing safety standards stricter than the standards prescribed by NHTSA. It is therefore possible that a State's judicial system could in-

directly impose a common law "standard" of care on a vehicle manufacturer that a state legislature or administrative agency could not impose directly through the promulgation of "safety standards." Congress nevertheless decided to tolerate that tension, in a compromise between the federal interest in uniformity and the States' traditional interest in compensating victims of motor vehicle accidents, an area in which the States have long measured defendants' conduct against standards of care articulated in the common law adjudication of tort claims.

Congress may have believed that any effect that state tort liability might have on manufacturers' decisions to institute safety measures beyond those required by federal law would be less disruptive of the federal interest in uniformity than positive performance standards adopted by state legislatures or administrative agencies; it may also have believed that state tort law should be permitted to impose liability on a particular manufacturer for failure to include a particular safety feature on a particular model, even if a State could not impose a uniform standard applicable to all vehicles sold or operated in the State. In short, Congress could "reasonably determine that incidental regulatory pressure [of tort liability was] acceptable, whereas direct regulatory authority [was] not," *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 186 (1988), and the courts "can do no less." *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984).

B. Respondents' Claims Are Not Impliedly Preempted By Either The Safety Act Or Standard 121

Petitioners also challenge the court of appeals' holding that respondents' tort claims are not impliedly preempted by either the Safety Act or Standard 121. Although we do not agree with the court of appeals' reasoning, we do agree with its holding.

1. a. Under this Court's settled preemption jurisprudence, state law is preempted "in three circumstances":

> First, Congress can define explicitly the extent to which its enactments pre-empt state law. * * * Second, in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively. * * * Finally, state law is pre-empted to the extent that it actually conflicts with federal law. Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements * * * or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

English v. *General Elec. Co.*, 496 U.S. 72, 78-79 (1990) (citations omitted).

The court of appeals nevertheless believed that, because the Safety Act contains an express preemption provision that it found (on the basis of a presumption and legislative history) to be a "reliable indicium" of Congress's preemptive intent, this Court's decision in *Cipollone* precluded any inquiry into the implied preemption of respondents' claims by the Safety Act or Standard 121. See Pet. App. 11a. Although there is language in the *Cipollone* opinion supporting the court of appeals' view, see 112 S. Ct. at 2618, we agree with petitioners that the existence of an express preemption provision should not, in itself, preclude all further inquiry into implied preemption, at least insofar as the question is whether state law "actually conflicts with federal law." See *English*, 496 U.S. at 79.

Although Congress, when it enacts a statute, may survey the statute's intended reach and attempt to identify the field in which state authority should or should not be ousted, it is unrealistic to expect that Congress will foresee all the

possible ways in which the States might adopt measures in the future that would bear upon the federal scheme. That is particularly true when Congress enacts a statute, like the Safety Act (but unlike the statute at issue in *Cipollone*), that takes effect through administrative action. In the Safety Act, Congress delegated standard-setting authority to the Secretary of Transportation and identified principles governing the exercise of that authority; it did not prescribe any safety standards itself, nor did it review the technical evidence concerning specific areas to be regulated by the Secretary. Thus, Congress could not know exactly how federal law would take shape as a result of the administrative process, and it could not predict whether or how States might adopt conflicting measures in the future.[11]

While it is often said that the ultimate touchstone of preemption analysis is Congress's intent (see, *e.g.*, *Cipollone*, 112 S. Ct. at 2617; *English*, 496 U.S. at 78-79), conflict preemption arises directly from the operation of the Supremacy Clause (U.S. Const. Art. VI, Cl. 2), rather than from a specific

[11] The court of appeals' analysis may have greater force with respect to implied *field* preemption, *i.e.*, where, even "in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively." *English*, 496 U.S. at 79. In such situations, the "existence of an express pre-emption provision tends to contradict any inference that Congress intended to occupy a field broader than the statute's express language defines." *Cipollone*, 112 S. Ct. at 2633 (Scalia, J., concurring in the judgment in part and dissenting in part). Implied field preemption rests less on the conclusion that state law actually conflicts with federal law in specific ways than on an inference, from the pervasiveness of the federal regulatory scheme, the need for uniformity, or the inherent federal nature of the subject matter, that Congress must have intended to leave "no room for the States to supplement it." *English*, 496 U.S. at 79. In the case at bar, no claim is made that Congress occupied the field of motor vehicle safety. See, *e.g.*, 15 U.S.C. 1392(d) (States may enforce standards identical to the federal standards).

intent on the part of Congress to displace state law. Thus, "[a] holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142-143 (1963). Similarly, a state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" may be impliedly preempted by a federal statute, even in the absence of any expression of congressional intent to supersede state law-making authority, and even if the state law does not fall within the scope of an express preemption provision in the statute. See *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 540-543 (1977). While implied preemption does require consideration of Congress's intent to the extent of ascertaining the purposes that Congress sought to achieve (and that might be impeded by state law), it does not depend on a specific, affirmative intent by Congress to supersede conflicting state law.

Because Congress enacts laws against the background of the Supremacy Clause, it must be assumed to believe that federal law will prevail in any collision with state law. The reverse presumption adopted by the court of appeals—that Congress's enactment of an express preemption provision indicates that it otherwise intended for state law to prevail—seems especially odd, for preemption provisions are usually intended to give effect to, not to restrict the effect of, the supremacy of federal legislation. Congress is free to allow state law to operate in the place of conflicting federal law, but we agree with petitioners that it should not be presumed to have done so.

This Court did not elaborate in *Cipollone* on what it meant by a "reliable indicium" of congressional intent, and the statement has already become a prolific breeder of litigation as parties attempt to show that an express statutory provision

is, or is not, such a reliable indicium. See Pet. App. 18a-19a (collecting cases). The passage in *Cipollone* was derived from two earlier decisions, *Malone* v. *White Motor Corp.*, 435 U.S. 497, 505 (1978), and *California Federal Savings & Loan Association* v. *Guerra*, 479 U.S. 272, 282 (1987) (plurality opinion of Marshall, J.). Neither decision, however, stands for the proposition that an express preemption clause moots inquiry into conflict preemption.

In *Malone*, the issue was essentially one of field preemption: whether a state statute regulating pension plans "trenched on * * * subjects that Congress had committed for determination to the collective-bargaining process." 435 U.S. at 504. The Court noted that the relevant federal statutes did not "expressly foreclos[e] all state regulatory power" with respect to issues that might be the subject of collective bargaining, *ibid.*, and so it observed that any congressional intent to preempt "must be *implied* from the relevant provisions of the * * * statutes," *id.* at 505. The Court was referring, however, to "implying" (or inferring) a congressional intent to oust state law from sources such as other sections of the statutes and their structure and legislative history; it was not referring to "implied" preemption of state laws that actually conflict with federal law. Moreover, the Court found the "reliable indicium" of congressional intent with respect to state authority, not in a preemption clause (which the statutes did not contain), but in a saving provision. *Ibid.* *Malone* therefore stands only for the proposition that a statute containing a saving clause but not a preemption clause can reliably indicate Congress's intent *not* to require broad preemption of state law.

In *Guerra*, the plurality concluded that the text of the saving provision of Title VII of the Civil Rights Act of 1964 furnished a reliable indicium of congressional intent to *preserve* all state laws *except* those that actually conflict with federal law. The Court accordingly held that there was no

need to "infer congressional intent to pre-empt state laws" from other provisions of Title VII. 479 U.S. at 282; see also *id.* at 295 (Scalia, J., concurring in the judgment) (noting that sections relied on by plurality were "*antipre-emption* provisions").

Against this background, we do not believe that *Cipollone* should be read to have announced a general rule that an express preemption clause, by itself, reliably or presumptively indicates an intent by Congress to tolerate conflicts between state and federal law.[12] Federal statutes vary widely in their terms and contexts, as well as the ways in which they interact with state law; that variety cautions against generalizations about Congress's preemptive intent. We agree with the court of appeals that courts should presume that Congress intended what it said in a statute's express preemption clause. Pet. App. 19a. But courts should also be free to employ all the traditional tools of construction in determining whether state law is preempted with respect to matters *not* covered by the express preemption clause. Thus, the reference in *Cipollone* to whether the preemption clause is a "reliable indicium of congressional intent" should be understood to mean that the traditional tools of construction with respect to the latter issue should include consideration of the express preemption clause, but not to the exclusion of other features of the statutory scheme, its legislative history, and actual conflict between state and federal law.

b. Moreover, implied conflict preemption by federal law is not confined to federal statutes. In this case, it is also necessary to determine whether state law is impliedly preempted by NHTSA's implementation of the Safety Act

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[12] Since *Cipollone*, this Court has undertaken implied preemption analysis even in cases involving an express preemption provision. See *CSX*, 113 S. Ct. at 1742 n.12; *John Hancock Mut. Life Ins. Co.* v. *Harris Trust & Savings Bank*, 114 S. Ct. 517, 526 (1993). The same was true prior to *Cipollone*. See, *e.g.*, *Rath Packing*, 430 U.S. at 540, 543.

through issuance of a particular federal standard. Whether or not Congress has enacted a statutory preemption provision, state laws are impliedly preempted by federal regulations to the extent that they actually conflict with those regulations, or stand as an obstacle to the accomplishment and execution of the federal regulatory scheme. "The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof." *City of New York* v. *FCC*, 486 U.S. 57, 64 (1988); see *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 706 (1984). Therefore, whatever the force of the court of appeals' reading of *Cipollone* where the only implied preemption claim is that state law conflicts with a federal statute, in a case where, as here, "state law is claimed to be pre-empted by federal regulation, a 'narrow focus on Congress' intent to supersede state law [is] misdirected,' for '[a] pre-emptive regulation's force does not depend on express congressional authorization to displace state law.'" *City of New York*, 486 U.S. at 64 (citation omitted).

2. a. Although we believe that the court of appeals should not have pretermitted its inquiry into implied preemption, we agree with its ultimate conclusion that respondents' claims are not impliedly preempted. Respondents' tort claims clearly are not impliedly preempted by the Safety Act itself, since nothing in the Act itself regulates the use of ABS devices. Nor would a finding of liability on respondents' claims stand as an obstacle to the full accomplishment of Congress's objectives in enacting the Safety Act. While a state law may be impliedly preempted "if it interferes with the methods by which the federal statute was designed to reach [its] goal," *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987), here, Congress's chosen methods of increasing automotive safety include both the establishment of federal minimum standards and the preservation of common law tort liability on

the part of even those manufacturers that comply with those standards.

b. Nor are respondents' claims impliedly preempted by Standard 121. Underlying petitioners' submission to the contrary is a premise with which we fundamentally disagree. Petitioners contend that the Ninth Circuit's decision vacating the stopping distance and stability requirements of Standard 121 as applied to trucks and trailers, or NHTSA's 1979 amendment of the Standard following the court's order, "effectively gave the manufacturers the option [under federal law] of not installing [an ABS] device." Pet. App. 10a; see Pet. Br. 11, 14, 16. Thus, they argue that any state law that forecloses that "option" must be preempted. In fact, neither NHTSA nor the Ninth Circuit determined that ABS devices are inherently unsafe or that the Safety Act requires that a manufacturer have the unfettered option not to install them. Because there has been no such federal determination, a state law claim based on the failure to install an ABS device would not conflict with federal law; the Court need not address how the implied preemption issue might be resolved in a case in which NHTSA had made such a determination.

i. The Ninth Circuit did not affirmatively determine in *Paccar* that ABS devices would present an unreasonable risk to safety. Rather, applying either the "substantial evidence" or "arbitrary and capricious" standard of review to NHTSA's rulemaking record, 573 F.2d at 636 (see *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41, 44 (1983)), the Ninth Circuit concluded only that NHTSA had erred by failing to take into account at that time evidence of serious safety problems presented by mass production of ABS devices, and by limiting its review of the evidence to the performance of ABS devices at the manufacturing stage. Thus, while the court set aside the provisions of Standard 121 that would have required installation of ABS devices in trucks and trailers until NHTSA undertook a more thorough review

of the evidence, it did not direct NHTSA to promulgate a standard prohibiting installation of ABS devices or preclude NHTSA from concluding, after further review (or after subsequent technological advances), that ABS devices should be required, either directly or indirectly through the imposition of braking performance criteria.[13] The court made clear that "[t]he agency may, of course, continue to propose new standards, including the promulgation of new stopping distance requirements to replace those here invalidated," and that it held "only that more pro[b]ative and convincing data evidencing the reliability and safety of vehicles that are equipped with [ABS devices] and in use must be available before the agency can enforce a standard requiring [their] installation." 573 F.2d at 643.[14]

ii. NHTSA likewise has never concluded that installation of ABS devices by truck manufacturers would contravene the purposes of the Safety Act, or that manufacturers who choose the "option" of not installing such devices should be protected from the consequences of that choice. The court of appeals' vacatur of Standard 121 left a regulatory gap in the area of stopping distances that NHTSA has not yet filled; the

[13] Any such order would have exceeded the proper scope of judicial review. See *FPC* v. *Idaho Power Co.*, 344 U.S. 17, 20 (1952); *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); see also *State Farm*, 463 U.S. at 57 n.21.

[14] Even if the Ninth Circuit had made an affirmative determination on the administrative record before it in 1978 that ABS devices presented a sufficient risk to safety that they should not be mandated on a nationwide basis, such a ruling could not preclude a trial court or jury in a private tort suit (presumably brought by plaintiffs who were not parties to the judicial review of NHTSA's standard) from finding that it was unreasonable for an ABS device not to have been installed on a particular vehicle. Nor would it bar the court or jury in such a suit from concluding that technology and other circumstances had sufficiently evolved since 1978 that it had become unreasonable for the manufacturer not to install ABS devices on trucks built in later years.

situation therefore is the same as if NHTSA had never instituted rulemaking concerning stopping distances for trucks and trailers, or had done so but never issued any standard. In such a situation, respondents' claims would not be impliedly preempted:

> In [some] cases, Congress has passed statutes which initiate regulation of certain activities, but where effective regulation must wait upon the issuance of rules by an administrative body. In the interval before those rules are established, this Court has usually held that the police power of the state may be exercised. * * * [And] where extensive regulations have been made, if the measure in question relates to what may be considered a separable or distinct segment of the matter covered by the federal statute and the federal agency has not acted on that segment, the case will be treated in a manner similar to cases in which the effectiveness of federal supervision awaits federal administrative regulation[.] The states are in those cases permitted to use their police power in the interval.

Bethlehem Steel Co. v. *New York State Labor Relations Bd.*, 330 U.S. 767, 773-774 (1947) (citations omitted).

Petitioners suggest (Pet. Br. 32) that this case is more analogous to one in which the "failure of the federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute." See *Bethlehem Steel*, 330 U.S. at 774. NHTSA, however, has not made any such determination about ABS devices in trucks and trailers. To the contrary, NHTSA explained when it amended Standard 121 in 1979 that ABS devices promote safety; it has encouraged manufacturers to install them; and it has given manufacturers guidance as to "reasonable standards for minimum acceptable performance" for ABS devices. 44 Fed.

Reg. 46,849 (1979). NHTSA also declined, after the *Paccar* decision, to order the removal of ABS devices from trucks and trailers manufactured to meet Standard 121. 43 Fed. Reg. 48,647 (1978). NHTSA in fact is of the view that "ABS are very effective in providing short stable stops in all operating conditions," 58 Fed. Reg. 11,012 (1993), and it currently estimates that "the use of ABS on all heavy vehicles would help prevent between 379 and 600 fatalities, [and] between 19,825 and 34,517 injuries [annually]," *id.* at 50,754.[15]

NHTSA's support for ABS devices can be contrasted to its findings, in the 1984 version of Standard 208, 49 C.F.R. 571.208, concerning installation of airbags in passenger vehicles. In promulgating that Standard, the Secretary concluded that, because of a history of substantial consumer resistance to automatic, or passive, occupant restraint systems, passenger safety would be best served by a diversity of such restraint systems, including but not limited to airbags, which would promote public acceptance of passive restraints. The Secretary explicitly determined that an all-airbag rule would have disserved the safety purposes of the Act. See 49 Fed. Reg. 29,001 (1984). As we explained in our *amicus curiae* brief in *Wood* v. *General Motors Corp.*, No. 89-46, common law tort actions that imposed liability for failure to install airbags (as opposed to other types of passive restraint devices) could, as a practical matter, have compelled manufacturers to install airbags in all their new vehicles. Because such a result would have frustrated the Secretary's policy judgment and would have had an adverse effect on safety, we argued in *Wood* (U.S. Amicus Br. 11-15) that such suits were preempted.[16] Interference with that federally

[15] The United States takes no position on the merits of respondents' specific claims that petitioners' failure to install ABS devices violated a common law duty of care.

[16] Although the majority of courts to have considered the question have concluded that "no-airbags" suits are preempted, they have done so on a broader theory of implied preemption with which the United States does not agree, *i.e.*, that the existence of "options" to comply with Standard 208 in itself precludes state-court judgments based on the failure to install one particular option. See, *e.g.*, *Pokorny* v. *Ford Motor Co.*, 902 F.2d 1116 (3d Cir.), cert. denied, 498 U.S. 853 (1990); *Taylor* v. *General Motors Corp.*, *supra*; *Kitts* v. *General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989), cert. denied, 494 U.S. 1065 (1990); *Wood* v. *General Motors Corp.*, 865 F.2d 395 (1st Cir. 1988), cert. denied, 494 U.S. 1065 (1990). In response to legislation (see NHTSA Authorization Act of 1991, Pub. L. No. 102-240, Tit. II, Pt. B, § 2508, 105 Stat. 2084), NHTSA has recently amended Standard 208 to require that all cars manufactured on or after September 1, 1997, and all light trucks manufactured on or after September 1, 1998, be equipped with airbags in the driver's and front outboard passenger's seats. 58 Fed. Reg. 46,551 (1993).

protected freedom of choice through state tort judgments would have conflicted with Standard 208. Compare *Building & Construction Trades Council* v. *Associated Builders & Contractors*, 113 S. Ct. 1190, 1194-1195 (1993).

NHTSA has taken no analogous regulatory step through Standard 121 in the area of ABS devices.[17] Indeed, at present there is no federal motor vehicle safety standard in effect at all requiring ABS devices or imposing stopping distances for trucks and trailers that use air brakes. Respondents' tort claims therefore do not conflict with Standard 121. Compliance with both Standard 121 and a state law duty of care requiring installation of ABS devices would not be a physical impossibility, since nothing in Standard 121 prevents manufacturers from installing such devices.[18] Nor would

[17] NHTSA's construction of Standard 121, including that it confers no federally protected right to choose whether or not to install ABS devices that must in turn be free from the incidental effect of common law tort suits, is entitled to substantial deference. *Thomas Jefferson University* v. *Shalala*, 114 S. Ct. 2381, 2386-2387 (1994); *Gardebring* v. *Jenkins*, 485 U.S. 415, 429-430 (1988).

[18] As we pointed out in *Wood* (U.S. Amicus Br. 11), there may be situations in which it would be impossible for a manufacturer to comply with both a state common law duty of care and a federal standard. If, for

state tort liability stand as an obstacle to the full accomplishment of the purposes of Standard 121, since that Standard does not reflect any determination by NHTSA that installation of ABS devices would be contrary to the safety objectives of the Act. NHTSA has consistently held the view that ABS devices promote passenger safety, even though there is no regulation in effect requiring those devices. Because "the Secretary has [n]either promulgated his own * * * requirement * * * [nor] decided that no such requirement should be imposed at all," *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 171-172 (1978), NHTSA's 1979 amendment of Standard 121 does not preempt respondents' claims.

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example, NHTSA determined that a particular item of equipment must have precise specifications to accommodate competing goals (*e.g.*, a headrest that is large enough to protect the driver but not so large as to obscure his view), a common law duty of care requiring the installation of a larger (or smaller) headrest could directly conflict with the federal requirements and be preempted.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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